JOE ASHBURN

IBLA 76-559 Decided October 12, 1976

Appeal from decision of the Nevada State Office, Bureau Land Management, rejecting application N-11126 to open land in a reclamation withdrawal to mineral location.

Affirmed.

1. Act of April 23, 1932 -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Lands -- Reclamation Lands: Generally -- Withdrawals and Reservations: Reclamation Withdrawals

   The rejection of an application under the Act of April 23, 1932, 43 U.S.C. § 154 (1970), to open lands in a reclamation withdrawal to mineral location will be affirmed when the applicant fails to submit facts to show the basis for his knowledge or belief that the lands contain valuable mineral deposits. Merely to state the lands contain such deposits is not sufficient.

APPEARANCES: Joe Ashburn, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Joe Ashburn appeals from the March 3, 1976, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting his application N-11126 to open land within a reclamation withdrawal to mineral location. Appellant's application, made pursuant to the Act of April 23, 1932, as amended, 43 U.S.C. § 154 (1970), included approximately 42,800 acres of land located in T. 23 N., R. 30 E.; T. 23 N., R. 31 E.; and T. 24 N., R. 31 E., M.D.M., Nevada. Appellant stated in his application that the land contains "a considerable amount of gold and silver in the water and, also, in the clay and sand" which he planned to develop by a "profitable recovery process" he and his associates had recently developed.

Upon receipt of appellant's application, the BLM State Office requested comments from the Bureau of Reclamation as required by 43 CFR 3816.3. In reply, the Bureau of Reclamation stated that they had "no objections to opening the lands to mining entry" provided that certain stipulations were included on the lands.

The BLM Carson City, Nevada, District Office then prepared a memorandum for the State Office. In this memorandum, the District Office reported that the U.S. Geological Survey had stated that the lands are valuable for various leasable minerals but that no locatable minerals are known or reported in the area. 1/ (Geological Survey had also stated that "this information should not be relied on solely as a determination that these lands are nonmineral in character for locatable minerals.") The District Office then commented that because "[m]inerals information in the Carson City District" is in agreement with the Geological Survey's report, a mineral-in-character examination of the lands was not performed. With regard to appellant's application, the District Office stated that because the application lacked a quantitative analysis and was of a very general nature, it did not comply with 43 CFR 3816.2, which requires the applicant to set forth the facts upon which his belief that valuable minerals exist is based. The memorandum concluded with a quotation from a 1941 University of Nevada Bulletin discussing the "Presence of Commercial Quantities of Mercury and Gold in the Dry Lakes of Nevada." The Bulletin, as quoted, found claims of "great metallic wealth" to be "impractical and visionary." The State Office rejected appellant's application because "these lands are not known or reported to contain valuable deposits of minerals," basing its conclusion on the findings of the District Office, including the quotation from the 1941 Bulletin.

Appellant disputes the findings of the BLM State Office. He suggests that the 1941 Bulletin is out of date because many advancements in metallurgy and technology have been made during the intervening years. He explains his recovery process as involving "ionic resin exchange" but gives no details showing the economic feasibility of his process. Finally, although he alleges that the Bureau of Mines office in Reno, Nevada, had agreed to test water from his claims, he includes assay reports only from a private assay firm: a 1973 assay of a 10-pound clay sample showing 2.264 ounces of gold per ton and 8.195 ounces of

1/ With regard to the existence of leasable minerals, Geological Survey reported that "the exercise of surface rights on these lands would not interfere unreasonably with operations under the mineral leasing laws."

silver per ton; and a 1976 assay of a 1-gallon water sample showing 1.38 milligrams of gold per gallon and 2.91 milligrams of silver per gallon.

[1] The Act of April 23, 1932, as amended, 43 U.S.C. § 154 (1970), authorizes the Secretary of the Interior "in his discretion" to open to "location, entry, and patent under the general mining laws" public lands which have been withdrawn "for possible use for construction purposes under the Federal reclamation laws." Before the Secretary may exercise his discretion, the statute requires that the land must be "known or believed to be valuable for minerals" and that the rights of the United States must not be prejudiced.

The regulations concerning applications under 43 U.S.C. § 154 (1970) are set out at 43 CFR Subpart 3816. These regulations contain at 43 CFR 3816.2 the following requirements, among others:

> The application * * * must set out the facts upon which is based the knowledge or belief that the lands contain valuable mineral deposits, giving such detail as the applicant may be able to furnish as to the nature of the formation, kind and character of the mineral deposits. * * *

Appellant has submitted no information concerning the nature of the formation, kind and character of the alleged mineral deposits. Instead, he merely stated that gold and silver are contained in water, sand and clay in the withdrawn area. The regulation, however, requires more than such an unsupported statement. Rather, it requires that the "facts" upon which the knowledge or belief is based be set out in some detail. On appeal, he contends that the 1941 Bulletin relied on by BLM is out of date and does not reflect more recent advances in metallurgy and technology, but he gives no specific information regarding such changes which might support his position. The assay reports submitted on appeal might offer some support to his belief that minerals may be recovered from the withdrawn lands if he related the character of the land sampled to that of the land sought to be opened to mining location. However, he gives no information which could relate these samples to an economic recovery of minerals from any portion of the withdrawn lands.

In addition to showing a basis for his belief that there are valuable mineral deposits, the "facts" should also show how the deposits are "valuable." This connotes some showing concerning economic feasibility of extracting and disposing of the minerals. The application is deficient in this respect as well as failing to show facts which would serve as a basis for establishing a

belief that minerals do, in fact, exist within the withdrawn lands. There is no other record information to support appellant's belief. Therefore, since his application fails to set out facts, rather than merely a statement of his belief, we affirm the rejection of the application.

This decision should not be considered as precluding appellant from filing a new application with more factual data in support, if he desires.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge